



INTERIOR BOARD OF INDIAN APPEALS

Estate of Rachel Edna Johnson, a.k.a. Rachel Edna Frank

53 IBIA 291 (7/27/2011)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ESTATE OF RACHEL EDNA)	Order Docketing and Dismissing Appeal
JOHNSON,)	
a.k.a. RACHEL EDNA FRANK)	Docket No. IBIA 11-109
)	
)	July 27, 2011

This case involves the probate of the Indian trust estate of Rachel Edna Johnson, a.k.a. Rachel Edna Frank (Decedent), deceased Nez Perce Indian, Probate No. P000045198IP, whom Administrative Law Judge (ALJ) R. S. Chester found to have died intestate (i.e., without a will. *See* Decision, Jan. 27, 2011. In a subsequent Order Denying Rehearing, Approving Tribal Purchase and Correcting Original Decision (Rehearing Order), dated April 14, 2011, the ALJ responded to a letter from one of Decedent's daughters, Rebecca Johnson (Appellant), who contended that Decedent had executed a will.¹ The ALJ concluded, after reciting that his staff had contacted the Bureau of Indian Affairs (BIA) to search for a will and that a search by BIA had not located any such will, that there was insufficient evidence of the existence of a will to support further investigation. *Id.* at 3.

Thereafter, Appellant mailed a letter to the ALJ's office, dated May 6, 2011, and addressed "To Whom it May Concern" (Letter), and enclosed what Appellant identified as Decedent's "original handwritten plan for her will of her land gift deeds." Letter at 1.² Appellant apparently intended to offer the enclosure to prove that Decedent had made a will at BIA's Northern Idaho Agency office in 1978. *See id.* The ALJ transmitted Appellant's letter to the Board as a possible appeal from the Rehearing Order.

On receipt of Appellant's letter, because it was unclear whether Appellant had intended to offer the enclosure as new evidence to be considered by the ALJ, or intended to appeal to the Board, the Board ordered Appellant to clarify her intent. *See* Pre-Docketing

¹ The Rehearing Order primarily addressed an unrelated letter from another of Decedent's daughters, Delia B. Johnson, objecting to the inclusion of two of her brothers, Norman R. Johnson and Gary Johnson, as heirs of Decedent's Nez Perce property. The ALJ construed Delia's letter as a petition for rehearing and denied it, but he also modified the original Decision to reflect that Gary is enrolled in the Nez Perce Tribe.

² The letter is signed "Rebecca A. Johnson." The return address on the envelope in which the letter was mailed to ALJ's office identifies Appellant as "Rebecca Barros Johnson."

Notice, Order for Clarification, Order to Show Cause, and Order to Serve Interested Parties, May 27, 2011 (Order) at 2-3.³ In the event that Appellant intended to have her letter treated as an appeal, the Board further ordered Appellant to show cause why the Rehearing Order should not be summarily affirmed,⁴ and also ordered her to serve copies of her letter and the enclosure on interested parties. The Board ordered Appellant to respond by June 17, 2011, and advised her that if she failed to respond, her appeal might be summarily dismissed without further notice.

The U.S. Postal Service's Track-and-Confirm service on its web site indicates that Appellant received a copy of the Board's order on May 31, 2011. The Board has received no response from Appellant.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed but dismisses this appeal for failure to prosecute.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

³ The Board explained that if Appellant clarified that she had intended to have her letter considered by the ALJ as evidence to support possible reopening, the Board would dismiss the appeal but refer the matter back to the ALJ for consideration. The Board expressed no views on whether or not Appellant's letter and Decedent's note would provide any basis for the ALJ to reopen Decedent's estate.

⁴ In ordering Appellant to show cause why the ALJ's Rehearing Order should not be summarily affirmed, the Board explained to Appellant that the Board could only consider new evidence on appeal, such as Decedent's handwritten note, if Appellant could demonstrate that the Board's failure to do so would result in manifest error or injustice. *See* Order at 4 (citing 43 C.F.R. § 4.318). The Board also noted that its preliminary review of Decedent's note did not convince the Board that the ALJ's conclusions that Decedent died intestate, and that further investigation into the existence of a will was not warranted, constituted manifest error or would result in manifest injustice if left to stand. *See id.* In this regard, the Board noted, among other things, that Decedent's note did not meet the requirements of a validly executed will, and the note referred to a *gift deed* process, which is separate and distinct from the testamentary process of executing a will. *See id.* The Board advised Appellant that while it was unclear whether Decedent ever followed up with BIA on a gift deed process, Appellant could inquire further with BIA on that issue.